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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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David Marmaros

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EXAMINER

DAO, THUY CHAN

ART UNIT

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2192

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/749,439	Applicant(s) MARMAROS ET AL.	
	Examiner Thuy Dao	Art Unit 2192	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6-13, 15-22 and 24-29 is/are pending in the application.
- 4a) Of the above claim(s) 4, 14 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-13, 15-22 and 24-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on September 19, 2008 has been entered.

2. Claims 1-3, 6-13, 15-22, and 24-29 have been examined.

Response to Amendments

3. In the instant amendment, claims 1-3, 6, 8, 9, 11-13, 15, 17, 18, 20, 24-26, and 28 have been amended; claims 4, 14, and 23 have been canceled.

Response to Arguments

4. Applicants' arguments have been considered. but are moot in view of the new ground(s) of rejection.

Claim Rejections – 35 USC §103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3, 6-13, 15-22, and 24-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peng (art of record, US Patent Publication No. 2004/0098361) in view of US Patent Publication No. 2001/0054026 A1 to Choate (art made of record,

hereafter "Choate") and US Patent No. 6,970,698 to Majmundar et al. (art made of record, hereafter "Majmundar").

Claim 1:

Peng discloses *a method for installing a software component on a recipient computing device on a network connected to a donor computer device comprising the software component, the method comprising:*

monitoring resource usage by software applications running on the recipient computing device (e.g., [0015], [0043], [0049]);

determining a need of the computing device for a software component (e.g., [0035]-[0036], [0015]); and

initiating an installation of the software component on the computing device during a time period selected based on the determined need (e.g., [0027], [0034]-[0035], [0047]) and

the monitored resource usage that does not adversely impact the software applications (e.g., [0017], [0043], [0049]).

Peng does not explicitly disclose *the monitored resource usage comprises usage of the network by the software applications.*

However, in an analogous art, Choate further discloses *the monitored resource usage comprises usage of the network by the software applications (e.g., [0013]-[0015]).*

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine Choate's teaching into Peng's teaching. One would have been motivated to do so to generate billing information as suggested by Choate (e.g., [0005], [0021]-[0022]).

Neither Peng nor Choate explicitly discloses *initiating a transfer of the software component from the donor computing device to the recipient computing device via the network during a time period when sufficient network bandwidth is available to not adversely impact usage of the network by the software applications.*

However, in an analogous art, Majmundar further discloses *initiating a transfer of the software component from the donor computing device to the recipient computing device via the network during a time period when sufficient network bandwidth is available to not adversely impact usage of the network by the software applications* (e.g., col.4: 29-41; col.6: 44-62).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine Majmundar's teaching into Peng and Choate's teaching. One would have been motivated to do so to avoid times of peak network utilization in a "push methodology" as suggested by Choate (e.g., [0005], [0021]-[0022]).

Claim 2:

The rejection of claim 1 is incorporated. Peng discloses *monitoring the resource usage by the software applications running on the recipient computing device comprises monitoring usage of a processor* (e.g., [0016]-[0017])

Claim 3:

The rejection of claim 1 is incorporated. Peng discloses:

monitoring the resource usage by the software applications running on the recipient computing device comprises monitoring usage of a processor by the software applications (e.g., [0018]-[0020]), and

initiating the installation of the software component during a time period when sufficient processor resources are available to not adversely impact usage of the processor by the software applications (e.g., [0026]-[0028]).

Claim 6:

The rejection of claim 1 is incorporated. Peng discloses *monitoring the transfer of the software component; and reducing a transfer rate for the transfer of the software component based on an increase in the usage of the network by the software applications* (e.g., [0031]-[0034]).

Claim 7:

The rejection of claim 6 is incorporated. Peng discloses:

reducing the transfer rate for the transfer of the software component comprises halting the transfer (e.g., [0015]), and wherein the method further comprises:
resuming the transfer based on a decrease in the usage of the network by the software applications (e.g., [0035]-[0036]); and
continuing the transfer until the software component has been transferred to the recipient computing device (e.g., [0043]).

Claim 8:

The rejection of claim 1 is incorporated. Peng discloses *determining the need of the recipient computing device for the software component comprises monitoring a usage pattern of a user of the computing device (e.g., [0049]).*

Claim 9:

The rejection of claim 1 is incorporated. Peng discloses *initiating the installation of the software component on the recipient computing device comprises initiating the installation of the software component on the recipient computing device when sufficient processor resources are available (e.g., [0027]).*

Claim 10:

The rejection of claim 6 is incorporated. Peng discloses *reducing the transfer rate for the transfer of the software component comprises adjusting the transfer rate for the transfer of the software component based on a change to a network connection of the recipient computing device (e.g., [0034]-[0035]).*

Claim 11:

Peng discloses *a computer-readable storage medium on which is encoded executable program code for performing a method comprising:*

monitoring resource usage by software applications running on a recipient computing device (e.g., [0015], [0043], [0049]);

determining a need of the recipient computing device for a software component (e.g., [0035]-[0036], [0015]); and

initiating an installation of the software component on the computing device during a time period selected based on the determined need (e.g., [0027], [0034]-[0035], [0047]) and

the monitored resource usage that does not adversely impact the software applications (e.g., [0017], [0043], [0049]).

Peng does not explicitly disclose *the monitored resource usage comprises usage of the network by the software applications.*

However, in an analogous art, Choate further discloses *the monitored resource usage comprises usage of the network by the software applications (e.g., [0013]-[0015]).*

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine Choate's teaching into Peng's teaching. One would have been motivated to do so to generate billing information as suggested by Choate (e.g., [0005], [0021]-[0022]).

Neither Peng nor Choate explicitly discloses *initiating a transfer of the software component from the donor computing device to the recipient computing device via the network during a time period when sufficient network bandwidth is available to not adversely impact usage of the network by the software applications.*

However, in an analogous art, Majmundar further discloses *initiating a transfer of the software component from the donor computing device to the recipient computing device via the network during a time period when sufficient network bandwidth is available to not adversely impact usage of the network by the software applications (e.g., col.4: 29-41; col.6: 44-62).*

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine Majmundar's teaching into Peng and Choate's teaching. One would have been motivated to do so to avoid times of peak network utilization in a "push methodology" as suggested by Choate (e.g., [0005], [0021]-[0022]).

Claim 12:

The rejection of claim 11 is incorporated. Peng discloses *the monitoring the resource usage by the software applications running on the computing device comprises monitoring usage of a processor* (e.g., [0018]-[0020]).

Claim 13:

The rejection of claim 11 is incorporated. Peng discloses:

monitoring the resource usage by the software applications running on the recipient computing device comprises monitoring usage of a processor by the software applications (e.g., [0017]), and

initiating the installation of the software component during a time period when sufficient processor resources are available to not adversely impact usage of the processor by the software applications (e.g., [0018]-[0020]).

Claim 15:

The rejection of claim 11 is incorporated. Peng discloses *the method further comprises: monitoring the transfer of the software component; and reducing a transfer rate for the transfer of the software component based on an increase in the usage of the network by the software applications* (e.g., [0041]-[0049]).

Claim 16:

The rejection of claim 15 is incorporated. Peng discloses:

reducing the transfer rate for the transfer of the software component comprises halting the transfer (e.g., [0015]), and wherein the method further comprises:

resuming the transfer based on a decrease in the usage of the network by the software applications (e.g., [0017]); and
continuing the transfer until the software component has been transferred to the recipient computing device (e.g., [0016]-[0018]).

Claim 17:

The rejection of claim 11 is incorporated. Peng discloses *the determining the need of the computing device for the software component comprises monitoring a usage pattern of a user of the recipient computing device (e.g., [0031]-[0034]).*

Claim 18:

The rejection of claim 11 is incorporated. Peng discloses *initiating the installation of the software component on the recipient computing device comprises initiating the installation of the software component on the recipient computing device when sufficient processor resources are available (e.g., [0027], [0043]).*

Claim 19:

The rejection of claim 15 is incorporated. Peng discloses *the reducing the transfer rate for the transfer of the software component comprises adjusting the transfer rate for the transfer of the software component based on a change to a network connection of the recipient computing device (e.g., [0026]-[0028]).*

Claim 20:

Peng discloses *a computing device, comprising:*
a computer processor; software applications running on the computer processor (e.g., FIG. 1, [0015]-[0020]; [0026]-[0028]);
a capture processor running on the computer processor and configured to monitor resource usage by the software applications and further configured to determine a need of the computing device for a software component (e.g., [0043], [0035]-[0036]; [0049]); and

an install processor running on the computer processor and configured to initiate an installation of the software component on the computing device at a time selected based on the determined need and the monitored resource usage that does not adversely impact the resource usage by the software applications (e.g., [0027], [0034]-[0035], [0043], [0049]).

Peng does not explicitly disclose *the monitored resource usage comprises usage of the network by the software applications.*

However, in an analogous art, Choate further discloses *the monitored resource usage comprises usage of the network by the software applications (e.g., [0013]-[0015]).*

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine Choate's teaching into Peng's teaching. One would have been motivated to do so to generate billing information as suggested by Choate (e.g., [0005], [0021]-[0022]).

Neither Peng nor Choate explicitly discloses *initiating a transfer of the software component from the donor computing device to the recipient computing device via the network during a time period when sufficient network bandwidth is available to not adversely impact usage of the network by the software applications.*

However, in an analogous art, Majmundar further discloses *initiating a transfer of the software component from the donor computing device to the recipient computing device via the network during a time period when sufficient network bandwidth is available to not adversely impact usage of the network by the software applications (e.g., col.4: 29-41; col.6: 44-62).*

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine Majmundar's teaching into Peng and Choate's teaching. One would have been motivated to do so to avoid times of peak network utilization in a "push methodology" as suggested by Choate (e.g., [0005], [0021]-[0022]).

Claim 21:

The rejection of claim 20 is incorporated. Peng discloses *the resource usage monitored by the capture processor comprises usage of the computer processor and usage of a storage medium* (e.g., [0017], [0047]).

Claim 22:

The rejection of claim 20 is incorporated. Peng discloses:
the capture processor is further configured to monitor usage of the computer processor by the software applications (e.g., [0031]-[0034]), *and initiate the installation of the software component at a time when sufficient computer processor resources are available to not adversely impact usage of the computer processor by the software applications* (e.g., [0039]-[0042]).

Claim 24:

The rejection of claim 1 is incorporated. Peng discloses *monitoring the resource usage by the software applications running on the computing device comprises monitoring usage of a storage medium* (e.g., [0026]-[0030]).

Claim 25:

The rejection of claim 1 is incorporated. Peng discloses *determining the need of the computing device for the software component comprises surveying files on the computing device* (e.g., FIG. 2, [0024]-[0027]).

Claim 26:

The rejection of claim 1 is incorporated. Peng discloses *the initiating the installation of the software component on the recipient computing device comprises initiating the installation of the software component on the recipient computing device when sufficient space on the storage medium is available* (e.g., [0034]-[0036]).

Claim 27:

The rejection of claim 6 is incorporated. Peng discloses *reducing the transfer rate for the transfer of the software component comprises setting a maximum transfer rate for the transfer of the software component to a value that is less than a current rate* (e.g., [0043]-[0049]).

Claim 28:

The rejection of claim 11 is incorporated. Peng discloses *the determining the need of the recipient computing device for the software component comprises surveying files on the recipient computing device* (e.g., [0017], [0035]-[0036], [0043]).

Claim 29:

The rejection of claim 15 is incorporated. Peng discloses *the reducing the transfer rate for the transfer of the software component comprises setting a maximum transfer rate for the transfer of the software component to a value that is less than a current rate* (e.g., [0027], [0034]-[0035], [0047], [0049]).

Conclusion

7. Any inquiry concerning this communication should be directed to examiner Thuy Dao (Twee), whose telephone/fax numbers are (571) 272 8570 and (571) 273 8570, respectively. The examiner can normally be reached on every Tuesday, Thursday, and Friday from 6:00AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam, can be reached at (571) 272 3695.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273 8300.

Any inquiry of a general nature of relating to the status of this application or proceeding should be directed to the TC 2100 Group receptionist whose telephone number is (571) 272 2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

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applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Thuy Dao/

Examiner, Art Unit 2192

/Tuan Q. Dam/

Supervisory Patent Examiner, Art Unit 2192